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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1279

RECEIVED

DEC - 8 2009

JOEL SCHNEIDER
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

STEPHEN PRATT

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

TUESDAY, OCTOBER 27, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above
6 matter taken by Theresa O. Mastroianni, Certified
7 Court Reporter, license number 30X100085700, and
8 Notary Public of the State of New Jersey at the
9 United States District Court House, One Gerry Plaza,
10 Camden, New Jersey, 08102, commencing at 3:22 PM.
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21 251 South White Horse Pike
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25

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1 JUDGE BISSELL: I'm now reopening
2 proceedings in the case of Stephen Pratt, civil
3 number 08-1279.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Pratt.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 On the date of Officer Baker's death at
18 Bayside State Prison, Mr. Pratt was an occupant of D
19 Unit. On August 11th, 1997 that unit was emptied out
20 for search and he states that on that day in which
21 the D Unit occupants were removed to go to the gym he
22 was in the dayroom at some point before emerging from
23 the unit. His head was down, his hands were behind
24 his back and at that point a dog, under SOGs control,
25 bit him in the left arm after which he was escorted

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1 out and then marched to the gym. He recalls that the
2 dog involved in his instance was a German Shepherd.

3 I might note that a video, D-313, shows
4 the exit of some D Unit inmates. It was not clear
5 which of those was Mr. Pratt, but there was presented
6 evidence that he was among them. And I also heard a
7 dog barking in the background, so there is at least
8 some evidence that a dog was present with the SOG
9 unit at the time of the removal of the inmates of D
10 Unit.

11 This incident with the dog is the only
12 assault that he claims in this case. He also
13 complained here of pains in his back from sitting on
14 the gym floor. However, as I have held in other
15 cases and is the situation here, it does not involve
16 the use of force and is not penal or punishment of
17 any sort. Also, there was a valid penalogical
18 purpose served here by the positioning of these
19 people in a uniform position as indicated, therefore
20 allowing control over a rather large group of
21 prisoners in an open area such as the gym.

22 Mr. Pratt's tale, however, about being
23 bitten by the dog here is not credible. Edgar Ruiz,
24 one of the two K-9 specialists on the BSP SOG detail
25 testified that a dog will only attack on command and

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1 will not lunge on its own at someone such as
2 Mr. Pratt.

3 Secondly, the dog is trained to bite
4 and hold until release, not just bite somebody in the
5 manner in which Mr. Pratt testified.

6 Third, customarily the dogs are held at
7 a safe distance from inmates even when in the unit,
8 and this is for obvious reasons.

9 Fourth, Mr. Ruiz also testified that if
10 an incident arose and in his recollection none did
11 with either K-9 handler during the lockdown, a report
12 would always be written of such an incident and he
13 knew of none nor has anything been presented in this
14 record to indicate that a report was written to
15 reflect that any inmate either accidentally or
16 otherwise was bitten by one of the SOG patrol dogs.

17 Mr. Pratt also stated that he wrapped
18 his arm where he had been bitten in a piece of his
19 own bed sheet which remained in place for about a
20 month. Not only is that inherently incredible and
21 also exaggerated when compared to his deposition
22 testimony with regard to this incident, but one of
23 his own housing officers in that unit, Charles
24 Egbert, Junior saw no such thing.

25 Furthermore, on that same evening of

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1 August 11th in the vicinity of 9:40 PM as reflected
2 in the log book, D-564, nurses were on the premises
3 for pill call and there was absolutely no indication
4 that an injury of this kind, presumably conspicuous
5 because of this self-wrapping by Mr. Pratt, was ever
6 brought to the attention of the nurses.

7 In short, I find and determine that a
8 dog was there with the SOG team and I'm prepared to
9 infer inside the unit at some point and for some
10 purpose, but Mr. Pratt has completely failed to prove
11 by a preponderance of the credible evidence that the
12 dog bit him.

13 Finally, although not every item of
14 evidence has been discussed in this opinion/report,
15 all evidence presented to the Special Master was
16 reviewed and considered. For the reasons set forth
17 above, I recommend in this report that the district
18 court enter an order and judgment of no cause for
19 action with regard to Stephen Pratt.

20 (Hearing Adjourned)

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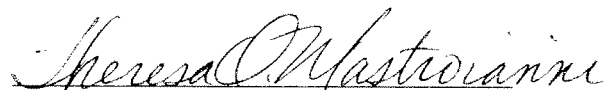
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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: October 27, 2009

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